THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION NOs.6237 OF 2004 & 22963 OF 2005

Dated 8th November 2005

Between:

Sree Rama Spun Pipe Co.,

Rep.by its Managing Partner Sri B.Abraham, & others

…Petitioners

And

The A.P. State Financial Corporation,

Rep.by its Branch Manager, Khammam.

…Respondents

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION NOs. 6237 OF 2004 & 22963 OF 2005

COMMON ORDER:

Both the writ petitions relate to the same subject matter. Hence, they are disposed of through a common order. The parties are referred to, as arrayed in W.P.No.22963 of 2005.

1st petitioner is a partnership firm and 2nd petitioner is its Managing Director. 3rd petitioner is the wife of 2nd petitioner. Along with certain other persons, the 1st petitioner borrowed amount from the respondent, towards working capital. Certain items of immovable property, owned by the petitioners 2 and 3, were offered as security, for repayment of the same. Since the petitioners committed default in payment of the instalments, the respondent initiated action for recovery of the same,

and proposed to proceed with the sale of properties. W.P.No.6237 of 2004 is filed, challenging the notice dated 27.3.2004. A conditional order was passed by this Court on 5.01.2004. On the ground that the petitioner did not comply with the conditions, the respondent issued auction notice dated 20.10.2005, which is challenged in W.P.No.22963 of 2005.

Petitioners contend that the firm had vast extents of movable and immovable properties, and it is always open to the respondent, to take action under Section 29 of the State Financial Corporations Act, 1951, for short "the Act", against the properties held by the first petitioner. They contend that it is only when the properties held by the firm are not sufficient to meet the liability, that the respondent ought to have proceeded against the items of property, offered as security, by the petitioners 2 and 3.

In the counter affidavit filed by the respondent, it is stated that no property held by the 1st petitioner was offered as security, much less mortgaged, and that the question of taking any steps under Section 29 of the Act, in relation to such property, does not arise. It is also stated that though number of opportunities were given to the petitioners, to repay the borrowed amount, they did not repay the amount, and the Corporation is put to hardship, on account of the same.

Heard the learned counsel for the petitioners and learned Standing Counsel for the respondent.

The crux of the contentions advanced on behalf of the petitioners is that the respondent must proceed under Section 29 of the Act, against the properties held by the 1st petitioner firm, before the properties offered as security are put to sale.

It is true that Section 29 of the Act empowers and enables the respondent to takeover the property, offered to it as security, for repayment of the loan advanced by it. The provision also brings about a semblance of transfer in favour of the

respondent, on such takeover. However, where a property held by an industry is not mortgaged, the steps contemplated under Section 29 of the Act cannot be taken. The amount in question was advanced as working capital. The only security that was offered for repayment of the same is in the form the properties held by petitioners 2 and 3. Therefore, no exception can be taken to the action initiated by the respondent for bringing such items of property, to sale.

Learned counsel for the petitioners submits that though the amount was utilized by the firm, the burden is being placed upon the petitioners 2 and 3, and in that view of the matter, they be extended the facility of instalments. Learned Standing Counsel for the respondent opposes the same.

Strictly speaking, no indulgence can be shown to the petitioners, at this stage. However, taking the totality of the circumstances into account, the further action in relation to the properties in question, can be directed to be deferred, duly extending the facility of instalments.

For the foregoing reasons, both the writ petitions are disposed of, directing that in case, the petitioners deposit a sum of Rs.2,00,000/- (rupees two lakhs), by 30.11.2005, and pays, the balance amount in two monthly instalments, thereafter, the further action, initiated against the properties held by the petitioners 2 and 3, shall be deferred. In default, it shall be open to the respondent, to proceed with the further steps. There shall be no order as to costs.

8th November 2005

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